

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

La Favorita, Inc.
Radio Station WAOS
Austell, GA

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File Number EB-00-AT-528

NAL/Acct. No. X3248004

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 22, 2000

By Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that La Favorita, Inc. has apparently violated, Sections 1.89(b) and 17.4(a) of the Commission's Rules¹ for failing to reply to a Notice of Violation and failing to register the station's antenna structure. We conclude that La Favorita is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On May 19, 1999, an Agent from the FCC Atlanta office inspected AM Broadcast station WAOS in Austell, Georgia. The agent observed that there was no tower registration number posted at the tower as required by the Rules.

3. The FCC Antenna Structure Registration database was checked on May 27, 1999 to determine if there was a record of the WAOS tower registration. The database showed no registration data for the tower.

4. On May 27, 1999, a Notice of Violation ("NOV") was mailed to La Favorita at their address of record. The NOV cited the failure of the licensee to register the WAOS tower and required a response within ten days. The NOV was returned by the U.S. Post Office as "undeliverable, no postal receptacle."

5. On August 31, 1999, the Atlanta FCC office learned that the licensee had a post office box address in Austell, GA in addition to their street address. The NOV was mailed to the post office box address, P.O. Box 746, Austell, GA, 30168. There was no reply received from the station.

6. On December 14, 1999, an agent from the Atlanta FCC office hand-delivered the NOV to the

¹ 47 C.F.R. § 1.89(b) and 17.4(a)

WAOS main studio. An employee of the station certified by his signature that he had received the hand delivered NOV. No reply to the hand-delivered NOV was received from the station.

7. On March 23, 2000, the Atlanta office mailed a certified letter warning La Favorita that a response had not yet been received from the NOV of May 19, 1999. The warning letter included a copy of the NOV and was sent to both the address of record and the post office box. La Favorita received the letter on March 27, 2000, as evidenced by a signed return receipt. Again, no reply was received from the station.

8. On June 2, 2000, WAOS was re-inspected by an Agent of the Atlanta FCC office. At the time of inspection there was no Antenna Structure Registration number posted at the station's tower. Station personnel could not produce documents that showed that the antenna structure for WAOS had been registered. After the inspection, the FCC Antenna Structure Registration database was searched. There was no record that the WAOS tower had been registered.

III. DISCUSSION

9. Section 1.89(b) of the Rules specifies that the recipient of a Notice of Violation has ten days or the period of time specified in the NOV to send a written response. Section 17.4(a) of the Rules requires that antenna structures that had been assigned painting and lighting requirements prior to July 1, 1996, be registered with the Commission prior to July 1, 1998.

10. Based on the evidence before us, we find that La Favorita willfully² violated Sections 1.89(b) and 17.4(a) of the Commission's Rules by failing to respond to a Notice of Violation and failing to register the antenna structure for radio station WAOS. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999), ("Policy Statement"), sets the base forfeiture amount for failure to reply to a Notice of Violation at four thousand dollars (\$4000) and for failure to file required forms at three thousand dollars (\$3,000).³ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,⁴ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a seven thousand dollar (\$7,000) monetary forfeiture is warranted because the record reveals

² Section 312(f)(1) of the Communications Act of 1934, as Amended ("Act"), 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80.

⁴ 47 U.S.C. § 503(b).

that La Favorita has a history of not replying to Notices of Violation and the antenna structure registration violation was repeated.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended⁵, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁶, La Favorita is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating Section 1.89(b) of the Commission's Rules requiring a written response to a Notice of Violation and Section 17.4(a) of the Commission's Rules requiring antenna structures to be registered with the Commission.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules⁷, within thirty days of the date of release of this NOTICE OF APPARENT LIABILITY, La Favorita SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3248004.

14. The response if any must be mailed to Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division, 445 12th Street S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. X3248004.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁷ 47 C.F.R. § 1.80.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁸

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to La Favorita, Inc. at 5815 Westside Road, Austell, GA 30106 and a copy to P.O. Box 746, Austell, GA 30168-0746.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.